S.B. CIVIL WRIT PETITION NO.2393/2005

Deepak Goyal Vs. Dinesh Kumar & anr.

Date : 2.5.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. RK Thanvi, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 5.2.2005 by which the trial court, on an application filed under Order 6 Rule 17 C.P.C., permitted the plaintiff to implead a party as defendant.

According to learned counsel for the petitioner, the suit was filed by the plaintiff for recovery of certain amount which according to the plaintiff, he paid as a consideration for purchasing the property in dispute.

According to learned counsel for the petitioner, the suit has been filed against the petitioner/defendant despite the fact that he is not owner of the property and, therefore, is not seller of the property in his onw right and now the plaintiff submitted an application under Order 6 Rule 17 CPC for amendment of the plaint and sought permission to amend the plaint to implead one more defendant who is transferee from the original owner of the property.

According to learned counsel for the petitioner, the trial court also allowed the amendment of plaint to incorporate plea of the plaintiff about charge over the property in dispute.

According to learned counsel for the petitioner, the plaintiff did not submit any application under Order 1 Rule 10 CPC nor made out any case for impleading party in the suit. It is also submitted that the plea of charge over the property which has been sold is also legally not sustainable by any stretch of imagination. It is also submitted that even from the impugned order, it appears that the Court has not applied its mind whether the party sought to be impleaded is necessary party for the purpose of deciding any controversy involved in the suit.

Since this writ petition has been filed by the defendant and his pleas are very specific and by impleading one party as defendant, his rights have not been affected in any manner because according to him, he was only a power of attorney holder for particular purpose. He is also not the owner of the property as submitted by learned counsel for the petitioner and more is that the Court has not decided that the purchaser is liable or property has charge, therefore also, merely because the party has been added in the suit as defendant, which according to trial court was just and proper, this Court is not inclined to interfere in the impugned order. Even if the order contains no detail ground for passing the order under Order 1 Rule 10 CPC, still this order need not be interfered only for

the purpose of of re-writing order. The suit has been filed for recovery of the amount and it has been kept as it is and the plaintiff by this amendment only want more relief than has been prayed in the plaint by taking a plea that there is charge over the property and that can be decided by the trial court within the framework of law after hearing both the parties when the amendment is allowed and the party is added and both the parties are given opportunity to rebut the allegations and prove their case on facts and/or on law.

In view of the above discussion, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya